

IN THE UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
v.)
Plaintiff,) No. 3:06-CR-05
DAMION BRADLEY JACKSON,) (Phillips / Shirley)
Defendant.)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition, or report and recommendation regarding disposition, by the District Court as may be appropriate. This matter came before the Court on February 14, 2008, for a hearing on Defendant Damion Bradley Jackson's *pro se* Motion for Review of Counsel [Doc. 88]. Mr. Jackson was present in the courtroom along with his attorney, James Varner. Assistant United States Attorney Tracee Plowell was present on behalf of the government. The United States took no position in the matter.

Attorney Varner informed the Court that the relationship between he and Mr. Jackson has so deteriorated that he does not believe they can continue to work together to present Mr. Jackson's case at sentencing. Attorney Varner stated that he believes it is in Mr. Jackson's best interest to appoint new counsel and asked that he be relieved from further representation. Attorney Varner stated that he has discussed with Mr. Jackson the fact that appointment of new counsel will necessitate a continuance of the sentencing date, which was then set for February 19, 2008.

Mr. Jackson agreed with Attorney Varner's statements and confirmed his request for replacement counsel, although it will result in a continuance of the sentencing. Mr. Jackson stated that he strongly believes it is appropriate to file an Objection to the Pre-Sentence Report in his case, but does not believe Attorney Varner will pursue the objection Mr. Jackson has suggested. Mr. Jackson also expressed extreme concern that Attorney Varner had not yet filed a Sentencing Memorandum on his behalf. Attorney Varner stated his earlier decision to ask for a continuance of the sentencing hearing, which was unopposed by the government. The Court explained to Mr. Jackson that Attorney Varner has a duty to file only those motions or memoranda that he believes are in accordance with the law and that it appeared there would be ample time for such filings. Mr. Jackson stated that he, nonetheless, had lost trust in Attorney Varner and did not believe they could cooperate with one another to present his best position at sentencing. Attorney Varner agreed that this was the case, adding that he believed Mr. Jackson's concerns about sentencing would be best addressed by new counsel, given the deteriorated condition of the attorney-client relationship at this point.

After hearing the statements of Attorney Varner and Mr. Jackson, the Court found that the attorney / client relationship between Mr. Jackson and his counsel is irreparably broken and the pro se Motion for Review of Counsel [Doc. 88] was granted. Attorney Varner was orally relieved as counsel for Mr. Jackson, except to the extent necessary to complete transition of the case to new counsel. Attorney Robert Kurtz was present in the courtroom and agreed to accept appointment to represent Mr. Jackson for the remainder of this case; Attorney Kurtz shall be entered as counsel of record. Attorney Kurtz made an oral motion to continue the sentencing date in order to adequately familiarize himself with the case, consult with Mr. Jackson and prepare for sentencing. The Court

found the oral motion to continue well-taken, and the parties agreed on a date for sentencing of March 28, 2008, at 1:30 p.m.

IT IS ORDERED:

- (1) Mr. Jackson's pro se Motion for Review of Counsel [**Doc. 88**] is **GRANTED**;
- (2) Attorney Varner is relieved from further representation as set forth above, and Attorney Kurtz shall represent Mr. Jackson for the remainder of the case; and
- (3) the sentencing in this case is rescheduled for **March 28, 2008, at 1:30 p.m.**, before the Honorable Thomas W. Phillips, United States District Judge.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge